

Federal Communications Commission

DA 99-3040

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-72
Table of Allotments,	)	RM-9265
FM Broadcast Stations.	)	RM-9368
(Middlebury, Berlin and Hardwick, Vermont) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: December 29, 1999

Released: January 7, 2000

By the Chief, Allocations Branch:

1. At the request of Dynamite Radio, Inc. ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 10254 (1998), proposing the substitution of Channel 265C2 for Channel 265A at Middlebury, Vermont, the reallocation of Channel 265C2 from Middlebury to Berlin, Vermont, as the community's first local aural service, and the modification of Station WGTK's license to specify operation on the higher class channel and Berlin as its community of license. Petitioner filed comments<sup>2</sup> and Montpelier Broadcasting, Inc. ("MBI") filed comments and a counterproposal.<sup>3</sup> Petitioner also filed reply comments as well as comments responsive to the counterproposal.

2. As stated in the Notice, petitioner seeks to upgrade Station WGTK from a Class A to a Class C2 and change its community of license from Middlebury to Berlin, Vermont, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The allotment of Channel 265C2 to Berlin could provide that community with its first local aural service while Middlebury would retain local aural service from fulltime AM Station WFAD and noncommercial educational FM Station WRMC. While the Commission did not question Berlin's status as a community for allotment purposes, it did request the petitioner to provide more specific data regarding the areas and populations which would gain and lose service if Channel 265C2 were allotted to Berlin. In response, petitioner states that Station WGTK, as a 3 kW Class A station licensed to Middlebury, presently provides service to 31,711 persons within a 1,843 square kilometer area. If the allotment of Channel 265C2 to Berlin is granted, the station could provide service to 212,572 persons within a 7,893 square kilometer area, or a net gain of 180,861 persons within a 6,050 square kilometer area. The population within the gain area currently

<sup>1</sup> The community of Hardwick has been added to the caption.

<sup>2</sup> As requested in the Notice, petitioner has complied with the requirements of Section 1.52 of the Commission's Rules by attesting that the statements contained in its petition for rule making are truthful and accurate to the best of its knowledge. As pointed out by the petitioner in reply comments, it did include a statement in its petition stating that "[i]n accordance with Section 1.52 of the Commission's rules, I hereby verify this document."

<sup>3</sup> Public Notice of the filing of the counterproposal was given on October 2, 1998, Report No. 2300.

receives at least five fulltime aural services. Petitioner also states that the reallocation would cause a loss of service to 18,459 persons within a 1,013 square kilometer area. However, it states that the entire loss area will continue to be well-served in that the population within the loss area will receive fulltime aural service from anywhere between seven and sixteen fulltime aural services.

3. MBI, licensee of FM Station WNCS, Montpelier, Vermont, argues that petitioner's request should not be accepted for consideration because it failed to comply with the verification requirements of Section 1.52 of the Commission's Rules and did not provide complete gain and loss and reception data upon which parties could base their response. Rather, it states that parties will be required to await the reply comment period before responding to the complete request of the petitioner. However, should the Commission not dismiss the rule making, MBI states that the public interest would be better served by retaining a second local commercial FM service at Middlebury, a community of 6,068 persons, than by allotting a first aural service to the considerably smaller community of Berlin, which has a population of only 2,556 persons.<sup>4</sup> While MBI acknowledges that the provision of a first local service is of a higher priority than the allotment of an additional service to a community, it argues that this is not an absolute priority and must be weighed against the harm resulting from the loss of a transmission service, citing Modification of FM and TV Authorizations to Specify a New Community of License, 66 FR 2d 877, 883 n. 26 (1989).<sup>5</sup> In this regard, it contends that Berlin is already well served by reception services and is not in need of new service. In addition, it states that an "unserved" portion of Essex County, New York, will be left with only three or four reception services if Station WGTV is reallocated to Berlin.

4. Alternatively, MBI proposes that the Commission allot Channel 264 to Hardwick, Vermont, as its first local aural service, and states its intention to apply for the channel, if allotted. It states that Hardwick, with a population of 2,964 persons, is more deserving than Berlin of such a service because it has a larger population and receives less broadcast service. It submits that Berlin receives transmission service from four FM and two AM stations while Hardwick receives service from only four stations. In addition, it states that two of the four stations received in Hardwick are Class C stations licensed to community in the Burlington market, some 66 kilometers distant, which are not responsive to the "special needs" of Hardwick.

5. In response, petitioner disputes MBI's claim that the reallocation of Channel 265C2 to Berlin will result in an area of Essex County becoming underserved. Instead, it asserts that the area of Essex County identified by MBI lies outside of Station WGTV's present 60 dBu contour and thus does not presently receive service from the station. Petitioner also points out that it did comply with the verification requirements set forth in Section 1.52 in its petition for rule making and again in its comments. However, even if it had failed to comply with this requirement in the petition, it argues that

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<sup>4</sup> All population figures are taken from the 1990 U.S. Census, unless otherwise indicated.

<sup>5</sup> The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (r) other public interest matters. Priorities (2) and (3) are given co-equal weight. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

the Commission has consistently requested that petitioners correct the oversight in comments rather than dismissing the petition for rule making. Finally, it states that the proposed reallocation of Channel 265C2 from Middlebury to Berlin is fully compliant with other change of community proposals granted by the Commission, citing Pauls Valley, Oklahoma, et al., 13 FCC Rcd 13458 (1999).

6. We believe that both Berlin and Hardwick are deserving of first local aural services. In an effort to accommodate both the petitioner and MBI, the staff performed a channel search and found that both parties can be accommodated. Channel 265C2 can be allotted to Berlin, as proposed in the Notice and Channel 290A can be allotted to Hardwick. We believe the public interest will be served by substituting Channel 265C2 for Channel 265A at Middlebury, reallocating Channel 265C2 to Berlin, and modifying the license of Station WGTV accordingly, since it will enable Berlin to receive its first local aural service and enable Station WGTV to improve its facilities and thus substantially increase the population which it serves. As stated in the Notice, Berlin is listed in the 1990 U.S. Census, with a population of 2,561 persons, has its own fire and police departments, local government, medical services, school and businesses. In addition, Berlin is not located within an Urbanized Area and, although its 60 dBu contour will encompass all of the Burlington Urbanized Area, its 70 dBu contour will not cover any part of the Urbanized Area. In addition, Middlebury will retain local aural transmission service from two aural stations. The allotment of Channel 290A at Hardwick will provide that community with its first local aural service.

7. Channel 265C2 can be allotted to Berlin in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 11.1 kilometers (6.9 miles) north of the community.<sup>6</sup> The site restriction does not obviate the short-spacings to Stations CBF-FM, Channel 265C1, Montreal, Quebec, and CBF10F, Channel 266B, Sherbrook, Quebec, Canada. Channel 290A can be allotted to Hardwick in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction.<sup>7</sup> The allotment coordinates do not obviate the short-spacing to Stations CFGL, Channel 289C1, Laval, Quebec, and CIMO, Channel 289C1, Magog, Quebec, Canada. Since both Berlin and Hardwick are located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence in these allotments, as specially negotiated short-spaced allotments, has been obtained.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 21, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City

Channel No.

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<sup>6</sup> The coordinates for Channel 265C2 at Berlin are 44-18-15 North Latitude and 72-37-24 West Longitude.

<sup>7</sup> The coordinates for Channel 290A at Hardwick are 44-30-18 North Latitude and 72-22-24 West Longitude.

Berlin, Vermont	265C2
Hardwick, Vermont	290A
Middlebury, Vermont	--

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Dynamite Radio, Inc., for Station WGTK, Middlebury, Vermont, IS MODIFIED to specify operation on Channel 265C2, in lieu of Channel 265A, and to specify Berlin, Vermont, in lieu of Middlebury, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Dynamite Radio, Inc., licensee of Station WGTK, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

11. A filing window for Channel 290A at Hardwick, Vermont, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau**